IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1173 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHMADBHAI ALARKHABHAI MEHTAR - Appellant(s)
Versus
AHER GHUGHABHAI BHIMBHAI & 1 - Defendant(s)

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Appearance :
MS MITTAL UKANI for MR RJ OZA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR RAJNI H MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/01/2007

ORAL JUDGMENT

1. The appellant as filed this appeal under the provisions of Section 110 D of the Motor Vehicles Act, 1939 [hereinafter referred to as the “Act”] for seeking

enhancement of the compensation awarded by the MACT [Auxi.], Bhavnagar by judgment and award dated 22nd May, 1986 in MACP No. 151 of 1984. The Claims Tribunal has awarded a sum of Rs.1,780=00 against the claim of Rs.20,000=00. At the outset it is stated that since the award is less than Rs.2,000=00, it is doubtful whether the appeal would be maintainable. When the appeal has already been admitted to final hearing, I do not go into the question of maintainability and decide the same on its merits.

2. The accident in question took place on 15th November, 1983. On that day, according to the appellant he was driving rickshaw on Bhavnagar Vartej Road. It was owned by him and he was carrying passengers from Khodiyar to Bhavnagar. When he had reached near Vartej Police ground, a truck bearing registration no. GTZ 4559 approached the spot from the opposite direction. It was driven by respondent no.1. According to the appellant, the truck was driven in a rash and negligent manner. It was carrying sand bags. As a result of excessive speed, respondent no. 1 lost control over the vehicle and it dashed against the rickshaw which was proceeding on its correct side of the road and at moderate speed. According to the appellant, as a result of the impact, the rickshaw

toppled down and he as well as the passengers sustained serious injuries. He has further averred that respondent no. 1 to avoid responsibility of the accident turned his vehicle and put it about 100 feet ahead of rickshaw, as if it was also proceeding in the same direction. According to the appellant, apart from the injuries caused to him, his vehicle was also badly damaged. He, therefore, filed petition under the provisions of the Act to claim compensation of Rs.20,000=00.

3. In support of his contentions raised in the petition, he also filed affidavit which is at Exh. 27. In the affidavit also he narrated the same facts and pleaded that since the accident occurred on account of the negligence of respondent no. 1 he was entitled to receive compensation of Rs.20,000=00 for personal injuries as well as damage to the vehicle and the resultant economic loss.

4. The claim was resisted by the respondents. Respondent no. 1 filed his written statement, which is at Exh. 15 and respondent no. 2 filed his written statement at Exh. 23. They denied the averments made in the petition. Respondent no. 1 stated that the account of accident given by the appellant was not proper. He has

stated that his vehicle was proceeding ahead of the rickshaw in the same direction and the appellant drove the vehicle rashly and negligently as a result of which, he lost control over it and it dashed against the rickshaw against the right side of the rear wheel of the truck. He has, therefore, prayed that the claim petition be dismissed.

5. The Claims Tribunal on the basis of the material produced before it including the respective affidavits, arrived at a conclusion that so far as respondent no. 1 is concerned, he was negligent to the extent of 40%. So far as the appellant was concerned, his negligence was to the extent of 60%. The Claims Tribunal also assessed the amount of compensation which could be awarded to the appellant for his personal injury, medical treatment, and for the damaged caused to the property of the appellant. In the opinion of the Claims Tribunal, the appellant was entitled to receive a sum of Rs.4,450.90 paise, but since he was negligent to the extent of 60%, the Claims Tribunal awarded a sum of Rs.1,780=00. Hence, this appeal.

6. I have heard Ms. Mittal Ukani learned advocate for the appellant and Mr. Rajni Mehta learned advocate

for the respondents. Ms. Ukani has submitted that the Claims Tribunal has not assigned any plausible reasons for holding the appellant guilty of causing accident to the extent of 60%. She has further submitted that even the assessment of the compensation made by the Claims Tribunal is erroneous. It is her submission that the Claims Tribunal ought to have held respondent no. 1 solely negligent for the accident. As against that Mr. Mehta has submitted that the relevant documents such as panchnama of the vehicles as well as scene of occurrence as well as affidavits of respondent no. 1, clearly show that it was the appellant who was solely negligent and on account of his rashness and negligence the accident occurred. According to him the Claims Tribunal was not at all justified in holding respondent no. 1 negligent to the extent of 40%.

7. I have perused the record and proceedings of the case. I have also considered the rival submissions carefully. So far as the issue of negligence is concerned, it is true that the judgment of the Claims Tribunal does not contain detail discussion as to how it had reached the conclusion holding respondent no. 1 negligent to the extent of 40% and appellant to the extent of 60%. As already stated above, according to the

appellant the truck came from the opposite direction and it dashed with the rickshaw, whereas the say of respondent no. 1 is that he was proceeding in the same direction i.e. Police ground Vartej to Bhavnagar and his vehicle was ahead of the rickshaw. It was rickshaw which came from behind and dashed against rear and right side of the truck after it slowed down. Both these affidavits if they are compared with the contents of the panchnama the say of respondent no. 1 gets ample corroboration. The panchnama clearly shows that there were marks of impact on the right side of the rear wheel of the vehicle. It also shows that the truck too was proceeding to Bhavnagar meaning thereby, that it was proceeding in the same direction in which the rickshaw was going. It is necessary to presume that when the panchas have not stated anything about the front portion of the truck in the panchnama which was drawn in presence of the appellant, there was no damage caused to the truck on its front portion. When the appellant himself was present, he would have definitely insisted upon the panchas to make note of the damage on front portion of the truck, but that is not so. Thus, these two important factors are sufficient enough to accept the say of respondent no. 1 and discard the say of the appellant with regard to manner in which the accident occurred. In

fact it is rather surprising that why the Claims Tribunal has attributed 40% negligence to the truck driver i.e., respondent no. 1. However, since there is no appeal or cross-objection from the respondents the said finding stands concluded.

8. So far as the quantum of compensation is concerned, the Claims Tribunal has in detail scrutinized the documentary evidence. It has found that the appellant had tampered with the bills *inasmuch* as the figures had been altered to inflate the claim. The relevant discussion also shows that the appellant had not suffered any serious injuries, but he had received trivial injury which was treated in the hospital as out-door patient and he was allowed to go. When this is the position, it not only reflects the character of the appellant but it also creates doubt in the mind of the Court that whether the claim made by him is genuine. Be that as it may, but even from the discussion made in paragraph nos. 10 and 11 of the Claims Tribunal's judgment, it appears that it has adequately carried out the exercise to assess the just compensation and in my opinion, there is no error committed by it and the amount of compensation is not required to be enhanced. In short, this appeal has no merits and it is dismissed.

R & P to be re-transmitted to the Tribunal forthwith.

][Akshay H. Mehta, J.]

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